time of the essence, would be, substantially, the inposition of a penalty. See note to *Wells* v. *Smith,* 31 Am. Dec. 278, and 2 Lead Cases Eq. 1134; POMEROY EQ. §455.

WILLS—ELECTION OF WIDOW TO TAKE UNDER WILL ESTOPPING HER TO TAKE INTESTATE PROPERTY.—Testator gave the residue of his property to his wife and son in equal shares, but the devise to the son lapsed upon his death during the life of the testator, and the testator died intestate as to this property. It was contended on behalf of the widow of the testator that she was entitled to this intestate property, she being the sole heir at law of her husband. *Held* that since the widow had elected to take under the will she was estopped from taking any portion of her husband's estate except that given her under the will; and that the property as to which he died intestate went to those who would inherit had the deceased left no widow. *In Re McAllister's Estate* (Minn. 1917), 160 N. W. 1016.

Upon the point here presented there seems to be an irreconcilable conflict of authority. See in accord with the principal case, *In Re Benson,* 96 N. Y. 499, 48 Am. Rep. 646; *Compton* v. *Ackers,* 96 Kan. 229, 150 Pac. 219. In an English case where the will expressly declared that certain provisions were made in lieu of dower, the court declared that the provisions applied only to such part of the estate as was disposed of by the testator, and the widow was not excluded from sharing in intestate property. *Naismith* v. *Boyes* [1899], A. C. 495. The same rule was followed in *Thompson's Estate,* 229 Pa. 542, 79 Atl. 173; *Bane* v. *Wick,* 14 Ohio St. 505; *Kaser* v. *Kaser,* 68 Ore. 153, 137 Pac. 187; *Sutton* v. *Read,* 176 Ill. 69, 51 N. E. 801. Contra *Ellis* v. *Dumond,* 259 Ill. 483, 102 N. E. 801. In *Demoss* v. *Demoss,* 47 Tenn. 256, where it was not expressly stated to have been in lieu of dower, the court decided in favor of the widow, basing their opinion upon the interpretation of their statute. Cf. *Collins* v. *Collins,* 126 Ind. 559, 25 N. E. 704. In *Beshore* v. *Lytle,* 114 Ind. 8, 16 N. E. 499, the court noticed the fact that the will gave the widow no "separate or individual estate," but merely made her a trustee, therefore her election to take under the will was not inconsistent with her claim to an ultimate share under the law. See in accord, *Micherson* v. *Bowly,* 49 Mass. 424; *State* v. *Holmes,* 115 Mich. 456, 73 N. W. 548; *Philleo* v. *Holliday,* 24 Tex. 38; *Bost* v. *Bost,* 57 N. C. 484. Also, 1 COL. LAW REV. 521.

WILLS—INCORPORATION OF FUTURE EVENT AS PART OF ORIGINAL DESCRIPTION.—Testatrix devised an estate to an afflicted son for life with remainder to "either one of my children who will take him into their family and see that he is supported and treated well"; no child was named to perform this duty. After the death of the life tenant, despite the fact that there is no dispute as to who did fulfil the condition by caring for the invalid, it is contended that this provision is void for uncertainty. *Held* (one justice dissenting) that the attempt to dispose of the remainder failed because the testatrix did not name or sufficiently designate which of the children should care for

the life-tenant and thereby become entitled to the remainder. *Summers* v. *Summers* (Ala. 1916), 73 So. 401.

In *Lehnhoff* v. *Theine,* 184 Mo. 346, 83 S. W. 469, an estate was given to those who paid for the maintenance of testator, but the court found that the one who claimed to have fulfilled the provision was indebted to the testator, and as a matter of fact there was no person who answered the requirements. The same question was before the court in *Fiester* v. *Shepard,* 92 N. Y. 251, on an appeal from the Surrogate court, but the case was dismissed on the grounds that the lower court had no jurisdiction. The writer of the opinion in the principal case expresses his dissent from the decision of the court, and cites *Dennis* v. *Holsapple,* 148 Ind. 297, 47 N. E. 631, 46 L. R. A. 168, 62 Am. St. Rep. 526, in support of his dissent. The theory of the dissent is that where an intention clearly appears in a will that a gift should vest in a person to be ascertained upon the happening of a certain event or by the performance of certain conditions, the will is not void for uncertainty, but the gift will vest in such person who does answer the description, for example, the determination of the members of a class. See *Festing* v. *Allen,* 12 M. & W. 279. If the vesting of the gift may depend upon a contingency, then, as was decided in *Stubbs* v. *Sargon,* 2 Keen 256, an event to happen in the future may form part of the original description of the devisee. See in accord *Howard* v. *American Peace Soc.,* 49 Me. 288; *Shepard* v. *Shepard,* 57 Conn. 24, 17 Atl. 173.

WORKMEN'S COMPENSATION ACT—EXCLUSIVE CHARACTER OF REMEDY.—In an action under §§1902-1908, Code of Civ. Proc., by an intestate's surviving brothers and sisters against his employer to recover damages resulting from intestate's death caused by the employer's negligence, the employer interposed the WORKMEN'S COMPENSATION ACT as a defense, it appearing that the deceased was employed in an occupation to which the ACT applied, and that he left no wife, children, or other kin answering the description of those entitled to compensation under the ACT. The Supreme Court sustained plaintiff's demurrer to this answer. *Shanahan* v. *Monarch Engineering Company,* 156 N. Y. Supp. 143. The Appellate Division affirmed this decision in 159 N. Y. Supp 257. On appeal to the Court of Appeals it was *held* that the order of the Appellate Division be reversed on the ground that the remedy provided by the WORKMEN'S COMPENSATION ACT was exclusive, and that the surviving adult brothers and sisters of a servant killed in service had no right of action. *Shanahan* v. *Monarch Engineering Co.* (N. Y. 1916), 114 N. E. 795.

The principal case turns upon the construction of the statute providing a remedy for death of an employee. The court construes the word "exclusive," appearing in §11 of the ACT as meaning that the remedy provided by the ACT for those enumerated as beneficiaries, not only excludes any other action by them, but it also excludes any action by those not enumerated. Hence the plaintiffs in this action, not being named as beneficiaries in the ACT, cannot maintain an action. The rule of statutory construction involved